

CHAPTER XI

PREVENTIVE ACTION OF POLICE

(Secs. 149-153)

Sec. 149 - Every police officer may interpose and **prevent** the **commission of cognizable offence**.

Sec. 150 - Every P.O. shall **communicate the information** received of a design to commit any **cognizable offence** to his senior P.O. or to P.O. whose duty is to prevent.

Sec. 151 - P.O. can **arrest without warrant** for the prevention of cognizable offence.

No person shall be detained in custody exceeding 24 hours.

Sec. 152 - P.O. may interpose to **prevent** any **injury to public property** (movable/immovable)/ removal or injury to any public land mark/ buoy/ other mark.

Sec. 153 - Any OIC of police station may without warrant **enter** any **place** within his limits to inspect and search **weight or measures** when reason to believe of such being false.

He can also seize the same and give information to Magistrate of such seizure.

CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

(Secs. 154-176)

Sec. 154 - Information in cognizable cases -

1) Information of commission of a cognizable offence can be given to OIC of a police station either in writing or oral.

- such information shall be recorded in writing and shall be signed by the informant.

- substance shall be entered in a book kept by such officer as SG may prescribe.

Proviso 1 - information given by a woman against an offence u/s 326A, 326B, 354, 354A-354D, 376, 376A-376E or Sec. 509 of IPC, shall be recorded by a woman police officer/ woman officer.

Proviso 2 - in the event that the person against whom an offence mentioned under proviso 1 is committed/ attempted is temporary or permanently mentally/

physically disabled, such information shall be recorded at the residence of the person seeking to report or at a convenient place of such person's choice in the presence of an interpreter or a special educator.

- the recording of such information shall be video graphed.
- the P.O. shall get the statement of the person recorded by J.M. u/s 164(5A)(a) as soon as possible.

2) Copy of information recorded shall be given free of cost to the informant.

3) If OIC of police station refuse to record information then the substance of such information in writing and by post to the SP. If SP satisfied, can either himself investigate or direct to subordinate to investigate.

Case law-

- *Sunil Kumar vs. State of M.P., AIR 1997 SC 940*
- *Vikram vs. State of Maharastra 2007 CrL J 3193 (SC)*

Telephonic information to police station about cognizable offence recorded in daily diary book, would be treated as FIR u/s 154, even when the said information though mentioning the names of assailants but investigation has started on its basis.

- *Lalita Kumari vs. Govt of U.P. (2014) 2 SCC 1*
 - **Registration of FIR of cognizable offences is mandatory.**
 - **If doubt, the preliminary inquiry to verify whether offence is cognizable.**
- *Pandurang Chandrakant Mhatre vs. State of Maharashtra (2009) 10 SCC 773* - FIR sets the criminal law in **motion** and makes the commencement of the investigation.
- *Sidhartha Vashisht vs. State (NCT of Delhi) (2010) 6 SCC 1 (Jessica Lal Case)*- A cryptic telephonic message of a cognizable offence cannot be treated as FIR.
- **Delay** in lodging FIR cannot be ground by itself for throwing away entire prosecution case. Court has to see explanation for delay and check truthfulness of the version put forward; *Surendranath Mishra vs State of Odisha, 2017 CrLJ 30(Orissa)*
- **Non-mentioning of assailants** – FIR is not an encyclopaedia. Not expected from a victim to give details of everything in FIR; *Mukesh vs State of NCT of Delhi AIR 2017 SC 2161*

Sec. 155 - Information as to Non-cognizable offence -

- When information of a non-cognizable offence is given to OIC of a police station, then he shall record the information in a book to be kept by such officer (*Rojnamcha* Register) and refer the informant to the Magistrate.
- No P.O. shall investigate a non- cognizable offence without the order of Magistrate.
- After receiving order, P.O. shall have all powers in respect to investigation as in cognizable offence (except arrest without warrant).
- If out of 2 or more offences, one is cognizable then it shall be deemed to be a cognizable case.

Sec. 156 - Power of P.O. to investigate cognizable offence -

- Any OIC of a police station can investigate a cognizable case without the order of Magistrate.

N.B. - When any complaint is made to Magistrate and he does not takes cognizance of it u/s 190, then such Magistrate can order investigation of it u/s 156(3). In this situation Sec. 202 will not apply.

Monitoring by Magistrate/court- The Magistrate can u/s 156 (3) monitor the investigation to ensure proper investigation; *Sakiri Basu v. State of UP, AIR 2008 SC 907; Rajeshwar Singh v. Subrata Roy Sahara, AIR 2014 SC 476.*

Sec. 157 - Procedure for investigation -

If upon information received, OIC of police station has reason to suspect the commission of offence, he is empowered to investigate u/s 156, **he shall send a report of same to Magistrate empowered to take cognizance.**

Proceed himself or send sub-ordinate to the spot for investigation.

Proviso -

- a) If information given by name of the person against whom it is made and the case is not of a serious nature, shall not proceed in person on spot.
- b) If it appears, no sufficient ground for entering on an investigation, he shall not investigate the case.

Proviso - where matter of rape, then statement shall be recorded at the -

- a) place of residence

b) place of choice, by woman P.O. in presence of her parents/ guardian/ near relatives/ social worker.

(2) Shall state reasons for not complying with the requirements of sub-section (1) and -under proviso (b), notify the informant that he will not investigate the case.

N.B. - The copy of FIR is sent to concerning Magistrate under this section.

Object- of this provision is to keep Magistrate informed of investigation so as to enable him to control investigation and if necessary to give appropriate direction u/s 159; *SahebgondaLaxman v. St. Of Maharashtra, 2017 CrLJ 194 (Bombay)*

Sec. 158 - Report how submitted - Report u/s 157 be sent to Magistrate through superior officer of police.

Sec. 159 - Such Magistrate on receiving such report -

- may direct an investigation or
- proceed himself or depute subordinate Magistrate to hold preliminary inquiry.

Sec. 160 – PO’s power to require attendance of witnesses

Any P.O. making investigation, by order in writing require the attendance before himself or any person, within his limits/ of adjoining station who is acquainted with the facts and circumstances of the case.

Such person shall attend.

N.B. - If does not appear then Sec. 174 IPC applicable.

Following persons cannot be called to police station --

- a) male person below age of 15 years.
 - b) male person above age of 65 years.
 - c) Woman
 - d) mentally/ physically disabled person.
- a, b, c, d >> only at residence where they reside.

Sec. 161 - Examination of witness by police

- PO may orally examine the person supposed to be acquainted with the facts of the case,
- shall be bound to answer truly all questions put to him, other than answers which would have a tendency to expose him to a criminal charge/ penalty/ forfeiture.

- The police officer may reduce into writing such statements and shall make a record of such statement, may be recorded by audio - video electronic means.
- If offences u/s 354, 354A-354D, 376, 376A-376E, 509 IPC >> must be recorded by women P.O./ women officer.

Sec. 162 Statements to police not to be signed

1. No statement made to P.O. shall be signed by person making it.

- Nor it shall be used as a substantive evidence in such inquiry/ trial.

- It can be used in such other proceeding which is different than the investigation in which such statement is made.

Proviso - But can be used in following circumstances -

a) to contradict the witness (if proved) u/s 145 IEA.

b) in re-examination to explain the matter referred in cross-examination.

2. a) Not apply to statement made u/s 32(1) of IEA i.e., it can be signed and used in proceeding of that case.

b) does not apply on Sec. 27 IEA.

Contradiction--An omission to state a fact or circumstance in the police statement may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. (*Explanation*)

Nandini Satpathy vs. P.L. Dani (1978 SC)-- u/s 161 and 162, 'any person' includes the accused person also, he also cannot be compelled to make self-incriminatory statement.

Sec. 163 - for such statement no inducement, threat/ promise shall be made.

Sec. 164 - Recording of confessions and statements -

1) Any MM/JM, whether has jurisdiction or not, may record confession / statement made to him in the course of investigation but before the commencement of inquiry/ trial. (*who and at which stage?*)

- such confession/ statement can be recorded by audio-video electric means in the presence of the advocate of accused.

- No confession shall be recorded by any P.O. whom any power of a Magistrate is given.

- 2) Magistrate, shall before recording any confession, explain to the person making confession, that he is not bound to make a confession and if he makes then, it may be used as evidence against him.
 - Magistrate shall not record any confession unless he has reason to believe that it is being made voluntarily.
- 3) At any time before the confession is recorded, the person may state that he is not willing to make confession to the Magistrate.
 - Then Magistrate shall not authorise him to police custody.
- 4) Any confession shall be recorded in the manner prescribed u/s 281 and shall be signed by the person making it.
 - The Magistrate shall make a memorandum and sign it.
- 5) Any statement other than confession shall be recorded in the manner provided for the recording of evidence.
 - Magistrate shall have power to administer oath to the person who made statement. (*oath is not administered to accused while recording his confession*)
- 5A)
 - a) In cases punishable u/ss. 354, 354A-354D, 376 (1), 376(2), 376A-376E, 509 of IPC, JM shall record the statement of the victim as in manner provided under (5) as soon as commission of the offence is brought to the notice of the police.
 - If person making statement is temporarily/ permanently mentally or physically disabled, JM shall take the assistant of Interpreter/ special educator.
 - b) statement under (a) shall be considered a statement in lieu of examination in chief and the maker can be cross-examined without the need of recording the same at the time of trial.
- 6) The Magistrate recording a confession/ statement shall forward it to the Magistrate by whom case is inquired/ tried.
 - ***Ravindra Kumar Pal alias Dara Singh vs. Republic of India (2011) 2 SCC 490*** - Guidelines for recording confessions.
 - Evidence recorded u/s 164 CrPC, acceptable to base a conviction; ***Ramesh Singh @ Photti vs. State of A.P., AIR 2004 SC 4545***
 - Denial of statement by the maker and omission to take signature is fatal- ***Dhananjaya Reddy vs State of Karnataka AIR 2001 SC 1512***